APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11,878

ANNE LIVINGSTON BEHR, *Appellant*

v.

MINE SAFETY APPLIANCES COMPANY, a Corporation of the State of Pennsylvania; CARBON MONOXIDE ELIMINATOR CORPORATION, a Corporation of the State of Delaware; CATALYST RESEARCH CORPORATION, a Corporation of the State of Maryland; GEORGE H. DEIKE; WILLIAM P. YANT; JOHN F. BEGGY; JOHN T. RYAN, JR.; W. DENNING STEWART; POTTER BANK AND TRUST CO., Executor of the Estate of Howard Zacharias, Deceased; and JOHN T. RYAN, JR., and JOHN F. BEGGY, Administrators of the Estate of John T. Ryan, Deceased; and JOSEPH H. HIRSHHORN.

ON MOTIONS TO DISMISS APPEAL AND MOTION TO LIMIT CONTENTS OF APPENDIX, ETC.

Argued April 16, 1956
Before GOODRICH, KALODNER and HASTIE, *Circuit Judges.*

Opinion of the Court

(Filed May 18, 1956)

By GOODRICH, *Circuit Judge.*

From a judgment of dismissal entered by the trial judge in the Western District of Pennsylvania the plaintiff appeals. The defendants now move to dismiss the appeal on the ground that it was not timely taken, that the timeliness of the appeal is jurisdictional and that the

Court has no power therefore to proceed further in the case. FED. R. CIV. P. 73(a); *Raughley v. Pennsylvania Railroad,* 230 F.2d 387 (3d Cir. 1956); 4 MOORE, FEDERAL PRACTICE ¶ 73.09 [6] (2d ed. 1955).

There are several defendants. All of them are involved in the same set of facts except defendant Hirshhorn. This defendant was never served in Pennsylvania and upon motion it was ordered November 16, 1955, that the complaint as to Hirshhorn be dismissed on the ground that the court lacked jurisdiction over his person. The appeal from this dismissal was noted February 16, 1956. Unless there is something involved in the point plaintiff makes about the alleged disqualification of the judge for prejudice, the appeal from the dismissal of Hirshhorn is obviously untimely and requires no more discussion.

On this same November 16, 1955, the attorney for the plaintiff filed a petition to all the judges of the Western District of Pennsylvania to disqualify the Honorable Rabe F. Marsh, Jr. as trial judge. The list of docket entries does not show the time of day when this petition was filed, but since it comes later in the list of docket entries than the order dismissing Hirshhorn, we conclude that it was filed later than that order.[1]

On November 21 Chief Judge Gourley of the Western District of Pennsylvania filed an order refusing the petition to disqualify Judge Marsh and assigned the

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1 Rule 79(a) of the Federal Rules of Civil Procedure provides that "All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be noted *chronologically* in the civil docket on the folio assigned to the action . . ." (emphasis supplied).

matter to him for disposition. Two days later Judge Marsh denied the petition to disqualify. On December 1 plaintiff, again seeking to have Judge Marsh disqualified, filed an affidavit of prejudice. 28 U.S.C. § 144 (1952). On December 7 plaintiff made a motion to Chief Judge Gourley to have the case assigned to another judge than Judge Marsh.

On December 10th defendants other than Hirshhorn filed a motion to dismiss on the ground that the plaintiff had failed to comply with certain orders of the court. This motion was answered by the plaintiff on December 14th. On January 3, 1956, Judge Marsh, after striking plaintiff's affidavit of prejudice from the record, granted the defendants' motion and dismissed the complaint.[2] Following this Chief Judge Gourley, on January 13, 1956, denied the motion to reassign the proceeding to another judge than Judge Marsh. On January 25th the plaintiff moved for reconsideration of adverse orders. On January 26th the motion was denied. The appeal was taken February 16th.

It will be noted, in this welter of dates, that the order dismissing the cause by Judge Marsh on January 3rd and the notice of appeal on February 16th (both 1956) are farther apart than the statutory time permitted. It will also be noticed that the motion as to Hirshhorn was acted upon prior to the several petitions to disqualify Judge Marsh.

It will also be noticed that Judge Marsh ruled on plaintiff's affidavit before he dismissed the complaint as

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2 Again the order of the docket entries indicates the order in which these actions were taken. See note 1, *supra*.

to the defendants other than Hirshhorn. The plaintiff has cited us a good deal of authority which he says establishes the proposition that when an affidavit of prejudice is filed a judge's power to proceed with the case is ended. We do not need to go into all of the ramifications of this question. Suffice it to say that the mere filing of the affidavit does not automatically disqualify the judge. He has authority to decide whether the claim of bias is legally sufficient.[3] And having disposed of this claim, he is free to act in the case.[4]

There was, as outlined above, a motion for reconsideration of adverse orders filed January 25, 1956. Plaintiff argues that this motion for reconsideration tolls the time for appeal and that therefore the time did not start until January 26, 1956. If that is so, obviously a notice of appeal filed on February 16th is in plenty of time. But this question was settled against the plaintiff in our recent decision in *Raughley v. Pennsylvania Railroad,* 230 F.2d 387 (1956). The difference in opinion among

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3 Price v. Johnston, 125 F.2d 806, 811 (9th Cir. 1942), *cert. denied,* 316 U.S. 677 (May 4, 1942); Eisler v. United States, 170 F.2d 273, 278 (D.C. Cir. 1948), *writ of cert. dismissed,* 338 U.S. 883 (1949); Taylor v. United States, 179 F.2d 640, 644 (9th Cir. 1950); United States v. Valenti, 120 F. Supp. 80, 83 (D.N.J. 1954).

4 Eisler v. United States, 170 F.2d 273, 278 (D.C. Cir. 1948), *writ of cert. dismissed,* 338 U.S. 883 (1949); United States v. Gilbert, 29 F. Supp. 507, 509 (S.D. Ohio 1939); Fieldcrest Dairies v. City of Chicago, 27 F. Supp. 258, 259 (N.D. Ill. 1939); United States v. Valenti, 120 F. Supp. 80, 84 (D.N.J. 1954). Judge Marsh did not have to wait for a formal ruling on the motion of December 7 to assign another judge. This motion was premised on the fallacious theory that the mere filing of the affidavit removed him from the case.

the members of the Court with regard to the necessity of a writing has nothing to do with the application of that decision to this situation. The case is in point. It settles the question adversely to the plaintiff. This conclusion makes it unnecessary to deal with a motion filed by the plaintiff to "limit the contents of the appendix and so forth."

The motion to dismiss the appeal as to all defendants will be granted.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Order

Present:

GOODRICH, KALODNER and HASTIE, Circuit Judges.

Upon consideration of the motion by all of the appellees other than Joseph H. Hirshhorn, and the motion by Joseph H. Hirshhorn, one of the appellees, to dismiss the appeal in the above-entitled case; and of the answers thereto and of the memoranda in support of and in opposition to the motions; and after hearing;

It is ORDERED that the motions be, and they are hereby granted;

And it is further ORDERED that the appeal be, and it is hereby dismissed.

Attest:

IDA O. CRESKOFF
Clerk

May 18, 1956

Sur Petition for Rehearing

Present:

GOODRICH, KALODNER and HASTIE, Circuit Judges.

Afted due consideration the petition for rehearing in the above-entitled case is hereby denied.

BY THE COURT

Dated: June 19, 1956 GOODRICH

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANNE LIVINGSTON BEHR, Plaintiff,

v.

MINE SAFETY APPLIANCES COMPANY, a corporation of the State of Pennsylvania, CARBON MONOXIDE ELIMINATOR CORPORATION, a corporation of the State of Delaware, CATALYST RESEARCH CORPORATION, a corporation of the State of Maryland, GEORGE H. DEIKE, WILLIAM P. YANT, JOHN F. BEGGY, JOHN T. RYAN, JR., W. DENNING STEWART, POTTER BANK & TRUST CO., Executor of the Estate of HOWARD ZACHARIAS, Deceased, and JOHN T. RYAN, JR., and JOHN F. BEGGY, Administrators of the Estate of JOHN T. RYAN, Deceased, and JOSEPH H. HIRSHHORN, Defendants.

Civil Action No. 12010

Memorandum and Order

MARSH, District Judge.

I find no merit in the arguments advanced by the plaintiff pertaining to the five motions between him and

the defendant Hirshhorn. It is plain that this court acquired no jurisdiction over the person of said defendant by the extraterritorial service in New York (see Rule 4 (f), Fed. R. Civ. P.), and, in my opinion, the said defendant or his counsel has done nothing which is effective to waive his right to contest the jurisdiction of this court and strike off the default judgment entered against him. Inasmuch as this court has no jurisdiction over the said defendant, the plaintiff's motion under Rule 37(a) to compel the answer to certain interrogatories will accordingly be denied. Further, we believe that neither defendant nor his counsel has done anything which may be termed sham, false, scandalous, malicious or in bad faith. Therefore, the motions to strike on those grounds will be dismissed.

An appropriate order will be entered.

ORDER OF COURT

AND NOW, to-wit, this 16th day of November, 1955, after due consideration, it is hereby ORDERED, ADJUDGED and DECREED:

1. That the Motion of Defendant Joseph H. Hirshhorn filed May 13, 1955, to Set Aside Entry of Default as to said Defendant entered April 20, 1955, be and the same hereby is granted and the default is hereby set aside.

2. That the Motion of Defendant Joseph H. Hirshhorn filed March 31, 1955, to Dismiss the Complaint in the herein action as to said Defendant or in lieu thereof to quash the return of summons and set aside the service thereof upon him on the ground that this court lacks

jurisdiction over his person be and the same hereby is granted, and the said complaint is hereby dismissed as to said Defendant and the said return of summons and the service thereof is hereby quashed and set aside.

3. That the Motion of Plaintiff under Rule 37a, filed June 21, 1955, to order Defendant Joseph H. Hirshhorn to answer certain written interrogatories addressed to and served upon him as Defendant on April 11, 1955, and filed April 14, 1955, be and the same hereby is denied, and the said Defendant Joseph H. Hirshhorn, being no longer a Defendant by reason of Paragraphs 1 and 2 hereof, is under no obligation to answer said interrogatories in their present form.

4. That the Motion of Plaintiff filed May 18, 1955, under Federal Rule 11, to Strike certain allegations of Defendant Joseph H. Hirshhorn's Motion to Set Aside Entry of Default on the ground that said allegations were sham, false and scandalous be and the same hereby is denied.

5. That the Motion of Plaintiff filed May 24, 1955, under Federal Rules 11 and 12(f), to Strike Defendant Joseph H. Hirshhorn's Statement of Reasons for Opposition to Counsel for Plaintiff's Motion to Strike under Rule 11, filed May 16, 1955, as impertinent, misleading, scandalous, in bad faith, incompetent, immaterial and malicious be and the same hereby is denied.

(signed) RABE F. MARSH
Unted States District Judge

Memorandum and Order

MARSH, District Judge.

The plaintiff in this action filed an affidavit pursuant to 28 U.S.C. §144 (1952), alleging that she believes that I am "prejudiced and biased against her cause and her counsel; and that as a result she will be unable to have a fair trial of this case" unless I am removed and another judge substituted. The grounds are set forth in five numbered paragraphs.

It is well settled that if an affidavit of bias and prejudice, properly certified by affiant's counsel, contains allegations of fact, which, if true, would disqualify the judge from trying the case, the judge cannot inquire into the truth of the charges but must forthwith step aside. But the judge against whom the affidavit is filed has the power to pass upon its legal sufficiency. *Berger v. United States,* 255 U. S. 22 (1921).

An examination of this affidavit and the five paragraphs contained therein fails to disclose a single statement of fact tending to show that I entertain personal bias and prejudice against Mrs. Behr or in favor of any of the defendants. *Eisler v. United States,* 170 F. 2d 273 (D.C. Cir. 1948). Indeed, the affidavit fails to use the qualifying word "personal", which omission has been held to be fatal to its sufficiency. *Henry v. Speer,* 201 Fed. 869 (5th Cir. 1913).

The generalization or conclusion in the fifth paragraph that I would be biased in favor of the defendants, or some of them, which is based on the fact that my brother is employed by the law firm representing some of the defendants, is a far-fetched assumption concerning my state of mind, buttressed by not a single tangible indication of any personal bias or prejudice.

The first four paragraphs in the affidavit are clearly insufficient since they allege mistakes of law in decisions I have made in the past in various phases of this and of another action. In construing the statute, the Supreme Court said: "It was never intended to enable a discontented litigant to oust a judge because of adverse rulings made, for such rulings are reviewable otherwise, but to prevent his future action in the pending cause. Neither was it intended to paralyze the action of a judge who has heard the case, or a question in it, by the interposition of a motion to disqualify him between a hearing and a determination of the matter heard. This is the plain meaning of the requirement that the affidavit shall be filed not less than ten days before the beginning of the term." *Ex parte American Steel Barrel Co.*, 230 U. S. 35, 44 (1913); cited with approval in *Berger v. United States, supra.*

In my opinion, the allegations in the affidavit, considered severally and collectively, are legally insufficient to require my disqualification under the statute; and it is therefore my duty to remain in the case. *Eisler v. United States, supra,* 170 F. 2d at 278.

An order will be entered striking the affidavit.

ORDER OF COURT

AND NOW, to-wit, this 3rd day of January, 1956, upon due consideration, it is ordered that the affidavit of Anne Livingston Behr be and the same hereby is stricken from the record.

(signed) RABE F. MARSH
United States District Judge

Order

The motion of defendants other than Hirshhorn filed December 10, 1955 is granted and IT IS ORDERED that plaintiff's action be dismissed.

(signed) RABE F. MARSH
District Judge

Dated: January 3, 1956

Motion to Reassign Cause

Now, comes the plaintiff, Anne Livingston Behr, by her attorney, Paul Ginsburg, Esq., and moves that Hon. Wallace S. Gourley, Chief Judge of this Honorable Court, enter an Order reassigning to the above cause a Judge of this Honorable Court other than Hon. Rabe F. Marsh, Jr., who being previously assigned thereto has been removed by virtue of the Affidavit of Plaintiff filed December 1, 1955, pursuant to the Judicial Code (28 USCA Section 144); and setting argument of the attached Motion for Reconsideration upon the next Argument List.

S/ PAUL GINSBURG
Attorney for Plaintiff
550 Grant Street
Pittsburgh 19, Pa.

Dated: 7 December, 1955

Motion for Reconsideration

Now, comes the plaintiff, Anne Livingston Behr, by her attorney, Paul Ginsburg, Esq., and moves your Honorable Court to reconsider, vacate and hear reargument upon certain orders heretofore entered in the above cause by Hon. Rabe F. Marsh, Jr., now removed by virtue of the Affidavit of Plaintiff filed December 1, 1955, because plaintiff believes said Judge Marsh "is prejudiced and biased against her cause and her counsel", as follows: denying Plaintiff's Motion Under Rule 37(a) directed against defendant George H. Deike; granting Motion Under Rule 37(a) of defendant Mine Safety Appliances Company directed against plaintiff; denying plaintiff's Motion Under Rule 37(a) directed against defendant Joseph H. Hirshhorn; granting defendant Hirshhorn's Motion to Set Aside Entry of Default; granting defendant Hirshhorn's Motion to Dismiss Complaint; denying Motion to Strike Under Rule 11 certain allegations in defendant Hirshhorn's Motion to Set Aside Entry of Default; denying Motion to Strike Under Rules 11 and 12(f) the Statement of Reasons for Opposition to Counsel for Plaintiff's Motion to Strike Under Rule 11; and refusing to consider the Affidavit of Daniel L. Tate in support of plaintiff's Entry of Default Against Defendant Hirshhorn, Motion Under Rule 37(a), Motion to Strike Under Rule 11, and Motion to Strike Under Rules 11 and 12(f), and to hear and consider his offered oral deposition in support thereof.

S/ PAUL GINSBURG
Attorney for Plaintiff
550 Grant Street
Pittsburgh 19, Pa.

Dated: 7 December, 1955

Memorandum Opinion

WALLACE S. GOURLEY, Chief Judge:

In this proceeding of November 16, 1955, Paul Ginsburg, Esq., counsel for the plaintiff, filed a petition addressed to "The Chief Judge and the Judges" of this court wherein he, as the petitioner, sought to have the Honorable Rabe F. Marsh, Jr., disqualified for bias and prejudice. On November 21, 1955, after careful consideration, I refused the petition on the ground that there is no authority in law for the Chief Judge or any other member of the court, severally or jointly, to so disqualify an associate judge. Accordingly, the matter was referred to the Honorable Rabe F. Marsh, Jr., for disposition in accordance with the provisions of the law. 28 USCA Section 144. On November 23, 1955, Judge Marsh refused the prayer of the petition on the grounds that the procedure which the petitioner sought to utilize was not in accordance with the provisions of law. On December 1, 1955, the plaintiff herself filed an affidavit pursuant to 28 U.S.C. Section 144 (1952), accompanied by a certificate of counsel, alleging that "the Honorable Rabe F. Marsh, Jr., is prejudiced and biased against her and her counsel, and that as a result she will be unable to have a fair trial of this case unless he is removed therefrom and another judge of this Honorable Court substituted for him. . . ." On January 3, 1956, the Honorable Rabe F. Marsh, Jr., filed a memorandum opinion and order in which it was adjudicated that under the provisions of 28 U.S.C. Section 144, the affidavit of prejudice was not legally sufficient to require his disqualification and, accordingly, was stricken.

On December 7, 1955, prior to the entry of the order striking the affidavit, counsel for the plaintiff presented to me, as Chief Judge of this court, the instant proceeding entitled "Motion to Reassign Cause" in which it was prayed that the above proceeding should be reassigned. This motion was based, inter alia, upon the fallacious premise that the Honorable Rabe F. Marsh, Jr., as a matter of law, was disqualified from hearing or determining any further matters relative to this action by the mere filing of the plaintiff's affidavit of bias and prejudice on December 1, 1955.

In view of the fact that my associate, Judge Marsh, decreed on January 3, 1956, that the affidavit of prejudice was not legally sufficient to require or justify the entry of an order of reassignment to another member of this court.

In addition thereto, I do not believe that any jurisdiction exists as Chief Judge of this court to interfere with the determination which has been entered by my associate, Judge Marsh.

In view of the foregoing, the motion to reassign the above cause of action is refused.

An appropriate Order is entered.

ORDER

AND NOW, this 13 day of January, 1956, the motion to reassign the above entitled proceeding to another member of this court other than the Honorable Rabe F. Marsh, Jr., will be and it hereby is denied.

WALLACE S. GOURLEY
Chief Judge

Motion for Reconsideration

Now, comes the plaintiff, Anne Livingston Behr, by her attorney, Paul Ginsburg, Esq., and moves your Honorable Court to reconsider, vacate and hear re-argument upon the following Orders heretofore entered in the above cause: (1) denying Plaintiff's Motion Under Rule 37(a) directed against defendant George H. Deike; (2) granting Motion Under Rule 37(a) of defendant Mine Safety Appliances Company directed against plaintiff; (3) denying plaintiff's Motion Under Rule 37(a) directed against defendant Joseph H. Hirshhorn; (4) granting defendant Hirshhorn's Motion to Set Aside Entry of Default; (5) granting defendant Hirshhorn's Motion to Dismiss Complaint; (6) granting motion of defendants other than Hirshhorn to dismiss plaintiff's action; (7) striking the Affidavit of Anne Livingston Behr from the record; (8) refusal to act upon plaintiff's Motion for Reconsideration dated 7 December 1955; (9) denying Motion to Strike Under Rule 11 certain allegations in defendant Hirshhorn's Motion to set Aside Entry of Default; (10) denying Motion to Strike Under Rules 11 and 12(f) the Statement of Reasons for Opposition to Counsel for Plaintiff's Motion to Strike Under Rule 11; and (11) refusing to consider the Affidavit of Daniel L. Tate in support of plaintiff's Entry of Default Against Defendant Hirshhorn, Motion Under Rule 37(a), Motion to Strike Under Rule 11, and Motion to Strike Under Rules 11 and 12(f), and to hear and consider his offered oral deposition in support thereof.

S/ PAUL GINSBURG
Attorney for Plaintiff

Dated: 25 January, 1956

Order of Court

AND NOW, to-wit, this 26th day of January, 1956, after due consideration, it is ordered that the motion for reconsideration filed by the plaintiff with this Court at Civil Action No. 12010 on January 25, 1956, be and the same hereby is denied.

(signed) RABE F. MARSH
United States District Judge

Notice of Appeal

Notice is hereby given that Anne Livingston Behr, plaintiff above named, hereby appeals to the United States Court of Appeals for the Third Circuit from the Order dated November 16, 1955 granting Defendant Hirshhorn's Motion to Set Aside Entry of Default; the Order dated November 16, 1955 granting Defendant Hirshhorn's Motion to Dismiss the Complaint and quashing and setting aside the return of summons and the service thereof; the Order dated January 3, 1956 granting the motion of defendant other than Hirshhorn to dismiss the action; the Order dated January 3, 1956 striking from the record the Affidavit of Plaintiff; and the Order dated January 26, 1956 denying plaintiff's Motion for Reconsideration of all the said Orders.

S/ PAUL GINSBURG
Attorney for Appellant
550 Grant Street
Pittsburgh 19, Pa.

Dated: 16 February, 1956.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a corporation, Plaintiff
v.
BONN KRAUS GINSBURG and JOHN PAUL GINSBURG, minors, BETTY K. GINSBURG and PAUL GINSBURG, Defendants
Civil No. 11521

Affidavit of Paul Ginsburg, Interpleaded Defendant, Pursuant to Section 144 of the Judicial Code

Commonwealth of Pennsylvania
County of Allegheny } ss.:

Before me, a Notary Public in and for said County and State, personally appeared Paul Ginsburg, interpleaded defendant in the above cause, who being duly sworn according to law deposes and says that he in good faith believes that Judge Rabe F. Marsh, Jr. has a personal bias or prejudice against him; that the said Judge should be disqualified, and shall proceed no further in this case by reason of the provisions of the Judicial Code (28 U.S.C.A. Section 144) pursuant to which this affidavit is filed; and that in support hereof he respectfully submits:

1. Affiant is informed and believes that Judge Rabe F. Marsh, Jr. has made known to numerous persons, as well as to affiant, in and out of Court, that he has a per-

sonal bias, prejudice, hostility and antagonism against this affiant, and would not under any circumstances render a decision or judgment favorable to Attorney Paul Ginsburg (affiant) personally or to his clients and associates; and this disqualifying position of Judge Marsh has been quite obvious.

2. In this case Judge Marsh made insupportable and untenable decisions when he refused affiant's Motion for Summary Judgment; when he granted an injunction restraining affiant from proceeding with a conspiracy suit in a New York State Court against the Mutual Life Insurance Company of New York and others; when he granted the adverse claimant's Motion To Transfer The Cause To Arizona, at which time Judge Marsh stated in open Court that he could not see how said adverse claimant could possibly prove his "claim"; and again when he allowed compensation to the Guardian Ad Litem out of the interpleaded fund prior to the adjudication of the adverse claims. It is bad enough that these prejudicial decisions have put affiant to exhorbitant costs and expenses already during over three years of litigating on preliminary motions and can put affiant to much more exhorbitant costs and expenses for an indeterminable number of years to protect his personal and professional reputation as well as his property from illegal attacks by "shysters" and other conspirators. But it is worse that said prejudicial decisions have caused affiant the most severe, excessive and unwarranted damages that can occur to a reputable citizen like affiant, who is also a member of the Bar in good standing, caused primarily through the invidious inferences and innuendos planted in this record.

3. In another action wherein affiant is counsel for plaintiff before Judge Marsh in the above Court at No. 12010,—Anne Livingston Behr v. Mine Safety Appliances Company, a Pennsylvania corporation, George H. Deike, Joseph H. Hirshhorn, et al., Judge Marsh made numerous insupportable and untenable decisions, adversely affecting affiant personally and professionally. In said action Judge Marsh disregarded the applicable law when he denied plaintiff her right to discovery; when he granted Hirshhorn's Motion To Dismiss and his Motion To Set Aside Entry Of Default; when he refused to strike untrue, scandalous matters wilfully inserted in the record by Hirshhorn's attorneys which were and are libelous per se concerning affiant; and when he rendered other decisions therein favorable to the defendants other than Hirshhorn, represented by Reed, Smith, Shaw & McClay with which firm Judge Marsh's brother, Attorney Edward W. Marsh, is associated. The said plaintiff, Mrs. Behr, filed an affidavit pursuant to Section 144 of the Judicial Code to have Judge Marsh removed from the case. On January 3, 1956, Judge Marsh filed an Opinion in which he was trying to justify his Order striking Mrs. Behr's affidavit of prejudice. In the course of said Opinion, Judge Marsh admitted, ". . . mistakes of law in decisions I have made in the past in various phases of this and of another action". The other action referred to by Judge Marsh is this action, the instant case.

4. If the several above mentioned injustices were simply "mistakes of law" as claimed by Judge Marsh, he would have corrected them. However, he has not even attempted to do so nor does he intend to, although he has had all year to do so since his said admission of "mistakes". Therefore, the only fair and just conclusion is

that said injustices are products of personal prejudice and bias which the said Judge has against your affiant personally, as well as of his relationship with and favoritism toward the opposing parties and their attorneys.

s/ PAUL GINSBURG

Sworn to and subscribed to before me this 18th day of July, 1956.

s/ VERA FREDERICK
Notary Public

My commission expires February 2, 1957.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing affidavit is made and filed in good faith.

s/ PAUL GINSBURG
Counsel for Paul Ginsburg,
Interpleaded Defendant.

Order of Court

AND NOW, to-wit, this 6th day of August, 1956, after due consideration of the affidavit filed by Paul Ginsburg, the allegations therein that I am now or have been personally biased or prejudiced against him or in favor of any adverse party, and that I have made known to numerous persons, as well as to affiant, in and out of court, that I have a personal bias, prejudice, hostility and antagonism against him and would not under any circumstances render a decision or judgment favorable to him or to his clients and associates are denied.

IT IS ORDERED that pursuant to Title 28 U.S.C. §144 an order of disqualification be and the same hereby is entered in the above entitled matter, and the Clerk of Court is directed, pursuant to Rule 5 of the Rules of Court, to reassign this proceeding to another judge of this court for disposition.

(signed) RABE F. MARSH
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PAUL GINSBURG, Appellant
v.
HORACE STERN and PATRCK N. BOLSINGER
No. 11,499

Present: MARIS, GOODRICH and STALEY, *Circuit Judges*

Order

Upon consideration of the motion and supporting memorandum filed by the appellees to limit the contents of the printed record and to impound certain original papers in the above entitled case, and of the appellant's answer thereto,

It is ORDERED that neither of the parties shall print in his or their brief or in any appendix thereto or otherwise either (1) the exhibit to the complaint or any of its contents, except a statement to the effect that the said exhibit is a petition addressed to the Supreme Court of Pennsylvania under Rule 17 (d) of said court seeking disciplinary action against a judge of the Court of Common Pleas of Allegheny County, the fifteen members of the Committee on Offenses of the latter court and four individual members of the bar of said court, (2) the brief of the plaintiff in the court below which is listed as Document No. 18 on the record, or (3) any portion of either of said documents. The parties may however, in their briefs or in oral argument request the

court to examine the said documents in its files and upon such request the court will do so, the rule requiring such matters to be included in the appellant's appendix for the use of the Judges being expressly waived in this case.

It is further ORDERED that said brief and said exhibit to the complaint, together with any other papers hereafter filed in this proceeding which disclose the scandalous matter in said exhibit and brief, shall be impounded by the clerk and made available for inspection only upon the order of this Court.

BY THE COURT,

MARIS
Circuit Judge

January 4 1955